50TH CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
1st Session. } { No. 1133.

MIAMI INDIANS.

MARCH 13, 1888.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. COBB, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany bill H. R. 2099.]

The Committee on Indian Affairs, to whom was referred "a bill to re-imburse the Miami Indians, of Indiana, for moneys improperly taken from them" (H. R. 2099), have considered the same, and report adversely thereon, and recommend that it do not pass.

In the year 1854 a treaty was entered into by the United States with the Miami Indians, in which, among other things, it is provided that the United States will pay to the Miami Indians, of Indiana, $231,004.

The original articles of agreement, made and concluded between the Commissioner, on the part of the United States, and the delegates representing the Indians, did not attempt to determine what particular persons constituted the Miamis of Indiana, but the whole tenor of these articles seems to contemplate that all Indians who could be ascertained to be of the Miami tribe, resident in Indiana, should participate in the fund to be distributed. The Senate of the United States amended this treaty, by striking therefrom certain provisions, and by inserting the following:

That no person other than those embraced in the corrected list agreed upon by the Miamis of Indiana, in the presence of the Commissioner of Indian Affairs, in June, 1854, comprising three hundred and two names as Miami Indians of Indiana, and the increase of the families of the persons embraced in said corrected list, shall be recipients of the payments, annuities, commutations, moneys, and interest hereby stipulated to be paid to the Miami Indians of Indiana, unless other persons shall be added to said list by the consent of the said Miami Indians of Indiana, obtained in council according to the custom of Miami tribe of Indiana. (See page 516, Book Indian Treaties.)

There were certain Indians whose names were not on the said corrected list, who claimed to be of Miami blood, and entitled to be enrolled among those to whom payments should be made. These presented their claim to Congress, and in 1858, after full investigation, Congress enacted as follows:

That the Secretary of the Interior be, and he is hereby, authorized and directed to pay to such persons of Miami blood as have heretofore been excluded from the annuities of the tribe since the removal of the Miamis in 1846, and since the treaty of 1854, and whose names are not included in the supplement to said treaty, their proportion of the tribal annuities from which they have been excluded; and he is also authorized and directed to enroll such persons upon the pay-list of said tribe and cause their annuities to be paid to them in future, provided that the foregoing payments shall be in full of all claims for annuities arising out of previous treaties. And

the Secretary is also authorized and directed to cause to be located for such persons each 200 acres of land out of the tract of 70,000 acres reserved by the second article of the treaty of June 5, 1854, with the Miamis, to be held by such persons by the same tenure as the locations of individuals are held which have been made under the third article of said treaty.

After this enactment the claimants herein referred to were added to the list of Miamies of Indiana, and became participants of the distributed fund up to and including the year 1867.

In the appropriation act for the Indian Department, approved March 3, 1865, this language is used in connection with the appropriation for the Miamies of Indiana: "For interest * * * per Senate's amendment to fourth article treaty, 5 June, 1854," etc. Attorney-General Speed, being called on to construe this last act in connection with the act of 1858, reviewed the two acts, and concluded his opinion by saying:

I am therefore of the opinion that payment must be made according to the list or pay-roll as added to by the Secretary of the Interior under the act of June 12, 1858.

The appropriation act approved March 2, 1867, contains a similar provision to that contained in the act of 1865, and in addition a section was inserted (section 5) in which it is provided that the sum appropriated or hereafter to be appropriated to them—the Miamies of Indiana—shall only be paid to such persons as may be, on the opinion of the Attorney-General, legally entitled to the same under the provisions of the treaty of 1854 and Senate amendments thereto, regardless of any subsequent legislation. Under the operation of this last act, and the opinion of the Attorney-General had thereon, the names which had been added by the Secretary of the Interior, by authority of the act of 1858, were stricken from the roll of Indiana Miamies, and such added persons ceased to draw any part of the fund.

The purpose of this bill is to re-imburse the Indians who were on the corrected list mentioned in the Senate amendment to the treaty of 1854 for the payments made to those who were added to this list by the Secretary of the Interior, and to pay interest on these payments. Your committee fail to see the justness of this demand.

It has been judicially determined that, when a treaty has been entered into which calls for the appropriation of money to carry it into effect, it is not in itself perfect. It is not operative until the power of appropriation is exercised.

Hence Congress, with whom lies this power, has the right to prescribe the terms on which it will exercise the power.

The appropriations provided for in the treaty of 1854 were to be successively made by each Congress, and to every Congress called on to make appropriation belonged the right to determine the terms on which it would act in this regard. The Congress of 1858 did determine that certain persons should be the beneficiaries of the appropriations then made and thereafter to be made to the Miamies of Indiana. The effect of this law was declared by the Attorney-General, as hereinbefore shown.

In the light of this legislation and of the course pursued by the Government thereunder, it is scarcely material to inquire whether or not the act of 1858 is in conflict with the Senate amendment to the treaty of 1854.

It may be observed, however, that it was not the purpose of the Senate by its amendment to cut off from the benefits of the treaty any who were of the Miami tribe resident in Indiana. If, as appears probable, those whose names were on the corrected list were disposed to

deal unjustly with their brethren, it was not only within the power of Congress, but clearly its duty, to prevent this injustice.

There is no pretense that the added names were not of persons of Miami blood.

The only claim is, it was "nominated in the bond" that none should be added without the consent of those on the original list.

Congress determined, and rightly it must be presumed, that the added persons were of the Miami tribe residing in Indiana. They were, hence, of those who gave in part the consideration for money appropriated under the treaty, and, so being, they could not in common justice have been excluded from sharing in the distribution.

In regard to the claim for attorney's fees your committee think it sufficient to quote the language of the Commissioner of Indian Affairs:

> As these attorneys were employed under a previous administration of the affairs of this Department, and as I have no reason to suppose that their contracts with the Indians were not closely scrutinized and the fees paid believed to be a reasonable and proper charge against said Indians before being approved, I must respectfully decline to give an opinion in the matter.

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